IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5738 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVERLAL HARIBHAI JIVANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5738 of 2003

MR HIMANSU M PADHYA for Petitioner No. 1

MR. M.S. RAO, LD. AGP for Respondent No. 1-2,4

MR TH SOMPURA for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 17/06/2004

ORAL JUDGEMENT

1. Rule. Mr. M.S. Rao, the learned AGP waives

service of rule on behalf of the respondent Nos. 1, 2 and 4. Mr. T.H. Sompura, learned advocate waives service of rule on behalf of the respondent No.3.

2. Feeling aggrieved by the order dated 4th April, 2003 made by the Chief Officer, Gariadhar Municipality the petitioner has preferred this petition. The Respondent no.3 Chief Officer, Gariadhar Municipality is herein after referred to as the Municipality.

3. By Resolution dated 20th October, 1995 passed by the then Administrator of the Municipality the petitioner was appointed as Overseer in the grade of Rs.1640-2900. By Resolution dated 26th June, 1997 passed by General Body of the Municipality, the petitioner's appointment as Overseer in the pay scale of Rs.1640-2900 was approved. However, the case of the Municipality is that the pay scale admissible for the post of Overseer was that of Rs.1350 - 2200. Therefore, by impugned order dated 4th April, 2000 the petitioner's scale has been reduced to that of Rs.1350-2200 and the recovery of the amount of difference in salary has been ordered. Feeling aggrieved, the petitioner has preferred the present petition.

4. One of the contentions raised by the petitioner is that the petitioner has not been given adequate opportunity before reducing his pay scale and ordering recovery of the amount of difference in salary. Learned advocate Mr. Sompura has relied upon the notice dated 19th August, 2002 and has submitted that in compliance with the principles of natural justice the petitioner had been given opportunity of hearing. He has also relied on the pay rules and various resolutions. He has submitted that the sanctioned pay-scale for the post of Overseer is Rs.1350-2200 and not Rs.1640-2900 which has been granted to the petitioner.

4. As to the compliance with the principles of natural justice, I am unable to agree with Mr. Sompura that adequate opportunity has been given to the petitioner. By notice dated 19th August, 2002 the petitioner was called upon to support the pay-scale of Rs.1640-2900 granted to him. I am of the view that the said notice is not an adequate opportunity as would be required for compliance with the principles of natural justice and fair play. Petitioner has not been called upon to show cause why his salary should not be reduced to 1350-2200, nor he has been called upon to show cause why recovery of amount of difference in salary should not be ordered. I am, therefore, of the view that the

impugned order has been made in violation of the principles of natural justice and fair play.

5. Petition is required to be allowed on that ground alone. The impugned order dated 4th April 2003 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute with cost.

6. This order shall not preclude the Municipality from initiating the proceedings afresh. The petitioner may be placed in appropriate pay scale after following the due procedure and in compliance with the principles of natural justice and fair play. If any order adverse to the petitioner is made hereafter, the petitioner shall be at liberty to challenge the same.

Dt: 17-6-2004 (Ms. R.M. Doshit, J)

/vgn